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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/506,899

04/21/2005

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EXAMINER

BRADEN, SHAWN M

ART UNIT

PAPER NUMBER

3781

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/506,899	<b>Applicant(s)</b> REINDERS, ANTONIUS ALOYISIUS MICHAEL MA	
	<b>Examiner</b> SHAWN M. BRADEN	<b>Art Unit</b> 3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |                                                                                                                                     |                                                                                         |
|-------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                                         | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                                | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>09/30/2005</u> . | 6) <input type="checkbox"/> Other: ____.                                                |

## **DETAILED ACTION**

### ***Specification***

1. Applicant is reminded of the proper content of an abstract of the disclosure.

A patent abstract is a concise statement of the technical disclosure of the patent and should include that which is new in the art to which the invention pertains. If the patent is of a basic nature, the entire technical disclosure may be new in the art, and the abstract should be directed to the entire disclosure. If the patent is in the nature of an improvement in an old apparatus, process, product, or composition, the abstract should include the technical disclosure of the improvement. In certain patents, particularly those for compounds and compositions, wherein the process for making and/or the use thereof are not obvious, the abstract should set forth a process for making and/or use thereof. If the new technical disclosure involves modifications or alternatives, the abstract should mention by way of example the preferred modification or alternative.

The abstract should not refer to purported merits or speculative applications of the invention and should not compare the invention with the prior art.

Where applicable, the abstract should include the following:

- (1) if a machine or apparatus, its organization and operation;
- (2) if an article, its method of making;
- (3) if a chemical compound, its identity and use;
- (4) if a mixture, its ingredients;
- (5) if a process, the steps.

Extensive mechanical and design details of apparatus should not be given.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 1 recites the limitation "the remaining peripheral part" in line 15. There is insufficient antecedent basis for this limitation in the claim.
4. Claim 1 recites the limitation "the four corner zones" in line 32. There is insufficient antecedent basis for this limitation in the claim.

5. Regarding claims 1,15,20,25 and 28 , the phrase "for instance" renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

6. A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 26 recites the broad recitation 70/30, and the claim also recites 90/10 which is the narrower statement of the range/limitation.

It is unclear if applicant is attempting to make a product by process claim with the method of making included in claims 8,9,11-15,16-25, it also appears applicant is claiming an apparatus in the independent claims. For examination purposes the examiner will assume applicant intends on pursuing a patent on the apparatus and the method steps will be ignored. Even though product-by-process claims are limited by

and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-7, 10, 27 and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Wyslotsky (USPN 5,546,731).

9. With respect to claim 1, Wyslotsky shows an integral receptacle (fig. 1) having on its top side a mouth opening (clearly shown fig. 2) and on its underside a bottom (20) with an upright body (22) connecting thereto and having at least one flat body part (any part on the bottom meets this recitation), which mouth opening is bounded by a mouth rim (30) which lies substantially in a flat plane and which, after filling of the receptacle with foodstuff and optionally a chosen gas or gas mixture (col 2 ln1), can co-act in hermetically sealing manner with a lid (28), for instance a foil connected by sealing to the mouth rim (fig. 2), a generally flat displaceable part (14) which forms part of the

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bottom, the body part or the lid and acts as displacer, which part is connected to the remaining peripheral part (remaining part of 20) of respectively the bottom, the body part or the lid by an at least one-dimensionally elastically deformable coupling edge (24); and optionally a filling with a gas serving as protective atmosphere, for instance a mixture of CO.sub.2 and N.sub.2 or CO.sub.2 and O.sub.2; characterized in that the displaceable part has a generally rectangular shape (fig. 1) corresponding with the shape of said remaining part of the bottom, the body or the lid; the surface area of the displaceable part amounts to at least 50% of the total surface area of the bottom, the body or the lid; the displaceable part substantially has bending stiffness; an elastically deformable zone (outer zone of 24) is situated in each of the four corner zones of the coupling edge and over the whole periphery of the displaceable part, this such that the displaceable part is movable between a first position (fig. 3) displaced to the outside and a second position (fig. 2) displaced to the inside.

10. With respect to claim 2, Wyslowsky shows the displaceable part (14) is situated in the bottom and that in the first position (fig. 3) the receptacle can rest on the displaceable part of the bottom and in the second position (fig. 2) can rest on the bottom edge.

11. With respect to claim 3, Wyslowsky shows the deformable zone (outer zone of 24) consists at least in said corner zones of at least two hinge lines (multiple hinges shown clearly fig. 3).

12. With respect to claim 4, Wyslowsky shows the deformable zone comprises a rolling zone (to the extent applicant defines "rolling zones" examiner views the area between the hinges meeting this recitation).

13. With respect to claim 5, Wyslowsky shows the hinge lines (multiple hinges shown clearly fig. 3) are corrugations protruding out of the local main plane of the receptacle (fig. 3).

14. With respect to claim 6, Wyslowsky shows the hinge lines are zones with reduced thicknesses (the hinge lines come to a point, clearly shown in figs 2-3, this point is considered to be a reduction in thickness)

15. With respect to claim 7, Wyslowsky shows the receptacle consists of plastic (col 1 In 17).

16. With respect to claim 10, Wyslowsky shows that both the first position (fig. 3) and the second position (fig. 2) of the displaceable part are stable, and the configuration thus possesses a bistable character.

17. With respect to claim 27, Wyslowsky shows that the packaging is intended for meat or products based thereon, that the gas mixture contains CO<sup>2</sup> and O<sup>2</sup> and that the ratio of these components is chosen to achieve an optimum in respect of discoloration of the packed foodstuff and the shelf life (col 3 line 3-6).

18. With respect to claim 28, Wyslowsky shows that the packaging is intended for frozen goods, for instance ice cream or deep-frozen products, wherein the protective atmosphere is absent and wherein after removal of the lid the frozen product can be released from the receptacle by pressing the displaceable part (14) inward.

***Claim Rejections - 35 USC § 103***

19. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8, 9 and 11-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wyslowsky (USPN 5,546,731).

Wyslowsky as applied above discloses the invention substantially as claimed. However Wyslowsky does not disclose that the receptacle is manufactured by thermoforming or vacuum-forming, for instance from a laminate, that the receptacle is manufactured by injection molding, that the receptacle consists substantially of foam material, that the receptacle is formed from a strip of foam material, that the strip of foam material is manufactured by extrusion and optional sizing, that by a laminating operation following the extrusion there is arranged on at least one side a foil layer, for instance an oxygen-barrier foil, that the strip of foam material is not fully foamed and that by supplying heat to the mould cavity of a die an additional foaming occurs, whereby a desired, for instance uniform wall thickness can be obtained.

It is well known in the prior art to use the claimed materials and methods of manufacturing containers in the same field of endeavor for the purpose of preserving quality, cost reduction, heat resistant and better preservation of food.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the container of Wyslowsky with the following methods and



materials the receptacle is manufactured by thermoforming or vacuum-forming, for instance from a laminate, that the receptacle is manufactured by injection molding, that the receptacle consists substantially of foam material, that the receptacle is formed from a strip of foam material, that the strip of foam material is manufactured by extrusion and optional sizing, that by a laminating operation following the extrusion there is arranged on at least one side a foil layer, for instance an oxygen-barrier foil, in order to preserve quality, that the strip of foam material is not fully foamed and that by supplying heat to the mould cavity of a die an additional foaming occurs, whereby a desired, for instance uniform wall thickness can be obtained.

20. Claims 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wyslotsky (USPN 5,546,731).

Wyslotsky as applied above to claims 1-7 and 10, discloses the invention substantially as claimed. However Wyslotsky does not disclose that the hinge lines are formed by ribs present in the mould cavities of a die, that the ribs are situated on a releasable insert which has to be positioned in the mould cavity of the die, that the hinge lines are formed by pressing against a formed receptacle an optionally heated stamp having ribs corresponding with the hinge lines.

It is well known in the prior art use the claimed methods of molding containers and making insert molds in the same field of endeavor for the purpose of quick and efficient manufacturing.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the hinge lines formed by ribs present in the mould cavities

of a die, that the ribs are situated on a releasable insert which has to be positioned in the mould cavity of the die, that the hinge lines are formed by pressing against a formed receptacle an optionally heated stamp having ribs corresponding with the hinge lines of the container of Wyslotsky in order to have a quick and simple manufacturing method.

21. Claims 19-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wyslotsky (USPN 5,546,731).

Wyslotsky as applied above to claim 1, discloses the invention substantially as claimed. However Wyslotsky does not disclose that the receptacle is formed from a blank consisting substantially of cardboard, that the blank is provided with a foil, for instance an oxygen-barrier foil, on at least the side of the blank later forming the inside of the receptacle, that the receptacle is formed from the blank by a mould with a forming surface and corresponding stamp, that the receptacle is formed by first removing the four corner zones from the blank and subsequently folding the walls upward and adhering these walls sealingly to each other in mutually overlapping relation, that the blank is provided on both sides with a foil, and the sealing adhesion is brought about by a welding operation, that the receptacle is formed by placing a paper fiber pulp in a mould cavity corresponding with the receptacle and causing it to dry, optionally under pressure and/or with heating.

It is well known in the prior art use the claimed methods of making cardboard containers and making insert molds in the same field of endeavor for the purpose of quick and efficient manufacturing.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the container of Wyslotsky of the material and methods of a blank consisting substantially of cardboard, that the blank is provided with a foil, for instance an oxygen-barrier foil, on at least the side of the blank later forming the inside of the receptacle, that the receptacle is formed from the blank by a mould with a forming surface and corresponding stamp, that the receptacle is formed by first removing the four corner zones from the blank and subsequently folding the walls upward and adhering these walls sealingly to each other in mutually overlapping relation, that the blank is provided on both sides with a foil, and the sealing adhesion is brought about by a welding operation, that the receptacle is formed by placing a paper fiber pulp in a mould cavity corresponding with the receptacle and causing it to dry, optionally under pressure and/or with heating for the purpose of having and container that is efficiently made of cardboard for the purpose of being more environmentally friendly.

22. Claims 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wyslotsky (USPN 5,546,731).

Wyslotsky as applied above to claim 1, discloses the invention substantially as claimed. However Wyslotsky does not disclose that the receptacle consists of aluminum, for instance with a thickness in the order of magnitude of 60 micro meters.

It is well known in the prior art to make containers of aluminum in the same field of endeavor for the purpose of preserving quality in a super strong container.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make Wyslotsky's container of aluminum, for instance with a thickness in the order of magnitude of 60 .um in order to preserve quality is a super strong container.

23. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wyslotsky (USPN 5,546,731).

Wyslotsky discloses the invention substantially as claimed. However Wyslotsky does not disclose that the packaging is intended for potatoes and/or fish or products based thereon, that the gas mixture contains CO<sup>2</sup> and N<sup>2</sup> and that the ratio of these gas components amounts to 70:30, preferably 80:20 and still more preferably 90:10, .

It is well known in the prior art to use different rations of Co<sup>2</sup> and N<sup>2</sup> in the same field of endeavor for the purpose of preserving food quality and shelf life.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to choose these claimed rations in order to extend shelf life with out complicating manufacturing.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SHAWN M. BRADEN whose telephone number is (571)272-8026. The examiner can normally be reached on Mon-Friday 9-6:30 est.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571)272-4561. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S. M. B./  
Examiner, Art Unit 3781

/Anthony D Stashick/  
Anthony Stashick  
Supervisory Patent Examiner, Art Unit 3781